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Concept and Reality of Legal Policy in Modern Russia

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This article deals with the topical issues of the Russian legal policy and raises a question about the necessity of a general legal policy concept in the Russian Federation as well as detailed concepts, specification and developments of the general concept, which in turn will contribute not only to the development of legal science, but also to the practice.

Keywords: legal policy, concept, legal policy concept, law-making policy concept, law-enforcement policy concept, doctrinal document.

The problem of legal policy takes one of the leading places among the fields of the legal science in the 21st century¹, which is quite reasonable since its resolution will cease many other theoretical and practical problems.

I propose to understand under ‘legal policy’ a science-based, consistent and systematic activity of government agencies and civil society institutions in order to establish an effective mechanism of legal regulation and civilized use of legal measures to achieve such goals as full provision of rights and freedoms of a person and a citizen, thus forming a legal statehood and a high level of legal culture and legal life of the society and an individual².

Legal policy is not really about the struggle for power, but more about the activity related to the development of a legal regulation strategy and its implementation. According to the Jean

Carbonnier’s true opinion “any act subordinated to achieve a specific goal can be understood as a policy and in this sense we can speak of legal policy (legislative policy, crime-fighting policy, criminological policy)”³.

The necessity of legal policy primarily relates to the need for continuous improvement of law, legal regulation and the need to purposefully change the legal system and determine the vector of the society legal development.

Legal policy as a factor in the modernization of the Russian legal system is designed to: 1) organize legal information in the legal system since the emergence of the state legal policy as a reaction to a marked increase in the flow of legal information that is not always internally consistent. Recognition of the international legal norms and principles along with the international treaties of the Russian Federation as the integral

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part of its legal system and the growth of federal as well as regional and municipal regulations etc. could not but lead to increasing of various inconsistencies and discrepancy in the Russia legal space 2) establish internal connections between the elements of the legal system (such as law, legal practice, prevailing legal ideology, etc.); 3) organize the interaction of the legal system and its components with the economic, political, moral, and other systems and its individual elements; 4) create the conditions for effective cooperation between the national and international legal systems.

What can be done at the practical level?

Firstly, we need an applied groundwork in this field. The Legal Policy Concept of the Russian Federation based on the theory should be designed before 2020 and influence the legal development of the society. There is no such document in Russia up to date. It shall be designed and adopted at the national level through approving the Decree of the President of the Russian Federation.

Meanwhile, the Republic of Kazakhstan adopted the Legal Policy Concept 2010 approved by the Decree of the President of the Republic of Kazakhstan Nursultan Nazarbayev in 2002 and it was renewed in 2009 for the period from 2010 till 2020⁴. The approval of the Legal Policy Concept by the Head of the State is a marquee event. This means a kind of “translation” of the accumulated legal policy conceptual knowledge from the doctrinal document to the official document containing specific guidelines for the law practice and legal development of the society.

A draft Legal Policy Concept of the Kyrgyz Republic for the 2012-2016 years has been recently published in the Internet, thus setting out the goals and objectives of this concept, the ways of the national law reformation and the ways of the law enforcement as well as the judicial system development. In particular, the first section of the project states that “this Legal Policy Concept

of the Kyrgyz Republic is a set of guidelines that define the process of modernization of the legislation and its application basing on the unity and integrity of the legal environment and the principles of the legal positions of all parties involved in the legal sphere”.

Ensuring the conceptualization of theoretical views and practical approaches in the field of legal regulation is one of the priorities of the modern legal science.

Indeed the legal science should result in a more concentrated, substantiated, systematic, integral form, such as a concept. This particularly concerns major scientific problems, which are the most topical ones and are in demand by both science and practice. The scientific groundwork becomes much more convincing and influence the government, lawmakers and law enforcers more noticeably when it is introduced on the concept level with the scientific views finalized in a more thorough and complex form.

Thus, the “Russian Legislation Concept”⁵ developed by the workers of the Institute of Legislation and Comparative Law under the Government of the Russian Federation has undertaken several editions.

However, we need a different level concepts such as legal policy concepts that have a broader social perception, a more extensive and at the same time more general coverage of legal material, concepts that can relate to the development of the regulations system (legislation), to the other sources of the Russian law (effective legal customs, treaties, etc.) and to the legal regulations as well as law enforcement and law interpretation activities, issues in the legal practice and doctrine development, etc. We need a detailed analysis of existing system and projection for the possible correlation of the above-mentioned elements of the Russian legal system.

Under current circumstances, it is necessary to develop the legal policy concept as one of the

key components of a strategy resulting in the balanced and sustainable development of the country⁶. Time has come to build a program of consistent and long-term legal action.

One of the outcomes of the scientific knowledge conceptualization of the legal regulation strategy and tactics in the transition period was the development of a doctrinal legal document that summarized this knowledge in a concentrated form and laid the foundation for its perception in the political and legal practice. A draft Legal Policy Concept of the Russian Federation became such a document, containing systemized views on the model program of the legal development of the Russian society in the near future⁷.

Secondly, we need more detailed concepts, specifying and developing the general one. For example, we need a concept of lawmaking, law enforcement, human rights, judicial policy and others.

Some of these concepts have already been developed in the form of doctrinal documents.

Thus, the draft legal policy concept was assumed as a basis for the development of the other policy doctrinal legal documents, in particular, the draft anti-corruption policy concept of the Russian Federation⁸, the draft lawmaking concept of the Russian Federation⁹, the draft law enforcement policy concept of the Russian Federation¹⁰. Other draft documents are under development.

These concepts are designed to create a development algorithm for one or another area of legal practice and show the vector of “potential realization” of various types of legal activities.

Thus, the above-mentioned draft concepts may as well become: a reference for the civil society structures involved in the formation and practical realization of the different types of legal policy; a reference for the public authorities preparing and adopting lawmaking and law enforcing decisions; a basis for the scientific and official interpretation of the legal standards; and a resolution of legal collision. The modern legal policy theory can actively assist the corresponding legal practice only by reaching a conceptual level.

¹ See, for example: Reform, regulation and risk: The internationalisation of legislation and legal policy - McCrimmon, L. (2010); European foreign policy: Legal and political perspectives (Book) - Koutrakos, P. (2011) Harvard Law School, US.; Legal and policy implications of cloud computing - Hill, E.(2011) Lecture Notes in Computer Science (including subseries Lecture Notes in Artificial Intelligence and Lecture Notes in Bioinformatics) 6765 LNCS (PART 1) , pp. 478-483; Legal basis of criminal policy in nature protection - Lavygina, I.V. (2012) Criminology Journal of Baikal National University of Economics and Law (4) , pp. 56-62.

² See more: Malko A. Theory of Legal Policy. Moscow, 2012.

³ Carbonnier J. Legal Sociology: Monograph / translation and introductory essay, Tumanov V. Blagoveshchensk, 1998. P. 43.

⁴ See: Kazakhstan truth. 2009. August 27.

⁵ See, for example: Legal reform: the concept of development of Russian legislation / ed. Okounkov L., Tikhomirov Y., Orlovsky Yu. Moscow, 2nd edition revised and enlarged. 1995; Concept of Russian legislation / Ed. Okounkov L., Tikhomirov Y., Orlovsky Yu. Moscow, third edition revised and enlarged. 1998; Concept of Russian legislation / ed. Khabrieva T., Tikhomirov Y., Orlovsky Yu. Moscow, 4th edition revised and enlarged. 2004; Concept of Russian legislation / ed. Khabrieva T. and Tikhomirov Y. Moscow, 5th edition revised and enlarged. 2010.

⁶ On the need for the legal policy concept in the Russian Federation, with concrete proposals on its content and structure, see Malko A On the Concept of Legal Policy of the Russian Federation // Legal policy and legal life. 2001. volume 2. p. 174-177.

⁷ See Matuzov N., Malko A., Shundikov K. Legal policy of modern Russia: The proposed draft concepts for discussion // Legal policy and legal life. 2004. Volume 1. p. 6-27.

⁸ See: Draft concept of anti-corruption policy of the Russian Federation / Ed. A. Malko. Saratov, 2007.

⁹ See: Malko A, Mazurenko A The concept of law-making policy of the Russian Federation (draft). Moscow, 2011.

¹⁰ See: The concept of law enforcement policy of the Russian Federation (draft) / Ed. A. Malko. Saratov, 2012.

Правовая политика современной России: концепция и реальность

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В статье рассматриваются актуальные проблемы российской правовой политики, ставится вопрос о необходимости создания как общей концепции правовой политики в РФ, так и детальных концепций, конкретизирующих и развивающих общую, что будет способствовать не только развитию юридической науки, но и практики.

Ключевые слова: правовая политика, концепция, концепция правовой политики, концепция правотворческой политики, концепция правоохранительной политики, доктринальный документ.
